

The Honorable T.W. Small
Hearing: Friday, January 14, 2005, at 1:30 p.m.

SUPERIOR COURT OF WASHINGTON FOR CHELAN COUNTY

Timothy Borders, Thomas Canterbury, Tom Huff, Margie Ferris, Paul Elvig, Edward Monaghan, and Christopher Vance, Washington residents and electors, and the Rossi For Governor Campaign, a candidate committee,

Petitioners,

v.

King County and Dean Logan, its Director of Records, Elections, and Licensing Services;
Adams County and Nancy McBroom, its Auditor;
Asotin County and Elaine Johnston, its Auditor;
Benton County and Bobbie Gagner, its Auditor;
Chelan County and Evelyn L. Arnold, its Auditor;
Clallum County and Cathleen McKeown, its Auditor;
Clark County and Greg Kimsey, its Auditor;
Columbia County and Sharon Richter, its Auditor;
Cowlitz County and Kristina Swanson, its Auditor and Ex-Officio Supervisor of Elections;
Douglas County and Thad Duvall, its Auditor;
Ferry County and Clydene Bolinger, its Auditor;
Franklin County and Zona Lenhart, its Auditor;
Garfield County and Donna Deal, its Auditor;
Grant County and Bill Varney, its Auditor;
Grays Harbor County and Vern Spatz, its Auditor;
Island County and Suzzane Sinclair, its Auditor;
Jefferson County and Donna Eldridge, its Auditor;
Kitsap County and Karen Flynn, its Auditor;
Kittitas County and Judy Pless, its Auditor;
Klickitat County and Diana Housden, its Auditor;
Lewis County and Gary Zandell, its Auditor;
Lincoln County and Shelly Johnston, its Auditor;
Mason County and Allan T. Brotche, its Auditor;
Okanogan County and Peggy Robbins, its Auditor;
Pacific County and Pat Gardner, its Auditor;

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No. 05-2-000027-3

SECRETARY OF STATE'S
RESPONSE TO

PETITIONERS' MOTION
FOR EXPEDITED
DISCOVERY

SECRETARY OF STATE'S RESPONSE TO PETITIONERS'
MOTION FOR EXPEDITED DISCOVERY - 1

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1 Pend Orielle County and Carla M. Heckford, its Auditor;
2 Pierce County and Pat McCarthy, its Auditor;
3 San Juan County and Si A. Stephens, its Auditor;
4 Skagit County and Norma Hickock-Brummett, its
Auditor;
5 Skamania County and Mike Garvison, its Auditor;
6 Snohomish County and Bob Terwilliger, its Auditor;
7 Spokane County and Vicki Dalton, its Auditor;
8 Stevens County and Tim Gray, its Auditor;
9 Thurston County and Kim Wyman, its Auditor;
10 Wahkiakum County and Diane L. Tischer, its Auditor;
11 Walla Walla County and Karen Martin, its Auditor;
12 Whatcom County and Shirley Forslof, its Auditor;
13 Whitman County and Eunice Coker, its Auditor;
14 Yakima County and Corky Mattingly, its Auditor;
15 Sam Reed, in his official capacity as Secretary of State for
16 the State of Washington;
17 Frank Chopp, Speaker of the Washington State House of
18 Representatives, and
19 Lieutenant Governor Brad Owen, President of the
20 Washington State Senate,

21 Respondents.

22 Every registered voter in our State has the right to file an election contest pursuant to the
23 procedures authorized by chapter 29A.68 RCW. Indeed, to date three contests have been
24 submitted to the State Supreme Court, one was filed in Kitsap County Superior Court, and this
25 action was filed in Chelan County Superior Court. The Respondent Secretary of State fully
26 supports the rights of registered voters as specified in Chapter 29A.68 RCW. Thus, while this
Respondent does not necessarily agree with all of the accusations and allegations asserted in the
Petitioners' pleadings in this case, this Respondent does agree with the Petitioners' right to
institute an election contest proceeding under chapter 29A.68 RCW.

The Respondent Secretary of State accordingly does not object to the implementation of
a reasonable protocol for ensuring the prompt production of authorized discovery concerning
facts that are legally relevant to this special proceeding under Chapter 29A.68 RCW. For the
reasons outlined below, however, the Petitioners' Motion does not show good cause for why its
blanket demand for a 10 calendar day turnaround on all written discovery requests and 48-hour

1 turnaround on producing all deponents provides a reasonable protocol for the prompt production
2 of authorized discovery concerning the legally relevant facts.

3 **1. Petitioners' Demand Is Premature Since They Have Not Served Any Discovery**
4 **Requests Compliant with CR 5.**

5 Petitioners' Motion asserted that they would be serving interrogatories and requests for
6 production on Monday, January 10, as well as filing a copy of those discovery requests with this
7 Court "so the Court can review them before the hearing on [Petitioners'] motion." Petitioners'
8 Motion at lines 20-22 on page 4 and footnote 1 on pages 4-5.

9 As this Court knows, CR 5(a) expressly mandates that "every paper relating to discovery
10 required to be served upon a party ... shall be served upon each of the parties" (emphasis added).
11 And with respect to the party filing this Response (the Respondent Secretary of State),
12 Petitioners' counsel knows that the undersigned counsel represents that party – not only from
13 Petitioner counsel's involvement in the prior suits with the Secretary of State concerning this
14 governor's election, but also from the Notice Of Appearance in this particular suit that was
15 delivered to Petitioners' counsel at 9:37 a.m. on January 10.

16 Petitioners, however, have not served any copy of any interrogatories or production
17 requests on the Secretary of State's undersigned counsel. Therefore, Petitioners have either
18 decided to withhold serving any discovery requests in this matter until after the hearing on their
19 motion, or Petitioners are withholding the discovery requests they are serving on other parties in
20 violation of CR 5.

21 In either case, however, the result is the same: the Secretary of State's Response cannot
22 address the reasonableness of the Petitioners' discovery demand since the interrogatories and
23 production requests that the Petitioners' Motion immediately implicates have not been served in
24 time for this Response to address them. The Petitioners' blanket 10 calendar day / 48-hour
25 demand should accordingly be denied as being premature at this point.
26

1 **2. Petitioners' Blanket 10 Calendar Day / 48-Hour Demand Is Not Reasonable.**

2 The Petitioners' election contest is not the only election contest in this State.

3 Nor is this one suit the only pressing matter of the People's business that the Respondent
4 elections officials have before them. For example, the Respondent Secretary of State and
5 County Auditors have to prepare for the upcoming February 8, 2005 special election process, as
6 well as election reforms for our upcoming elections that our State's citizens are requesting.

7 Although the prompt production of authorized discovery concerning facts that are
8 legally relevant to this Chapter 29A.68 RCW proceeding should be provided, the goal of
9 providing such discovery promptly should not be allowed halt the Respondents' ongoing
10 elections work or compromise the goal of getting the discovery that is produced done correctly.
11 For example, since the Respondents do not know what the Petitioners' requests will end up
12 being, the Respondents cannot know how long it will reasonably take – even on an expedited
13 schedule – to accurately respond to those Petitioner requests.

14 Especially since the Petitioners' Motion generically describes the discovery they will be
15 demanding in such broad and sweeping terms, their Motion does not establish that the arbitrarily
16 truncated 10 calendar day / 48-hour deadlines demanded by the Petitioners provide a reasonable
17 protocol for the prompt production of authorized discovery concerning legally relevant facts in
18 this Chapter 29A.68 RCW proceeding.

19 The Respondent Secretary of State agrees that there may be situations where, depending
20 upon the scope of the written discovery requests served or the scope of the deposition testimony
21 requested, a 10-day or 48-hour timeline might be reasonable. But Petitioners' blanket demand
22 for such truncated deadlines for all discovery requests and depositions is not reasonable.

